IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

MFA.No. 627 of 1997()

OPMV.1445/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD., CHURCH VIEW JUNCTION, KOTHAMANGALAM.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS/PETITIONERS/RESPONDENTS 1 AND 2:

1.GOMATHY,W/O.DECEASED MADE SWAMY, AGED 25, P.F.4386, TOP DIVISION, K D H VILLAGE, VAGUVARA ESTATE, THALAYAR P.O.

2.REVATHY,D/O.DECEASED MADA SWAMY, AGED 5, MINOR, DO.. DO.

3.GEETHA, D/O.DECEASED MADA SWAMY, AGED 3, MINOR, DO. DO.

4.VIJAYAKUMAR,S/O.DECEASED MADA SWAMY, AGED 3, MINOR, DO. DO.

5.MR.ANTONY K.C.,S/O.CHACKO, KOOTHODIYIL HOUSE, MANKULAM.

6.ANTONY, APO PAILY, MAMPULLY HOUSE, DEVIKULAM, MUNNAR.

RESPONENTS 2 TO 4 ARE MINORS, REP. BY THEIR MOTHER, WHO IS THEIR NATURAL GUARDIAN 1ST RESPONDENT HEREIN AS PER ORDER DATED 16.10.97 IN C.M.P.4861/97.

BY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.627 OF 1997 (A)

Dated this the 19th day of July, 2007

J U D G M E N T

KOSHY,J.

Husband of the 1st petitioner died in a motor accident on 15.3.1992 while he was travelling in a jeep bearing Registration No.KRT 3598. It was found that accident occurred due to the negligence of the driver of the jeep and Insurance company was directed to pay an amount of Rs.1,55,000/- with interest to the legal representatives of the deceased which included his wife aged 25 and three minor children aged between 3 and 5. The driver and owner were declared ex parte before the tribunal as they did not appear after receipt of notice. Tribunal found that R1 to R3 driver, owner and Insurance company are jointly and severally responsible and Insurance company was directed to deposit the compensation. Now the contention raised by the Insurance company is that the deceased being a passenger in a private jeep will not get the benefit of insurance

coverage as Insurance is an Act policy. Ext.B1 shows that it was an Act policy and policy was taken as the vehicle was a private jeep. In ***New India Assurance Co. Ltd. v. Satpal Singh (2000 (1) SCC 237)***, it was held that all passengers in a vehicle are entitled to coverage. That was overruled in ***New India Insurance Co. Ltd. v. Asha Rani and others ((2003) 2 SCC 223)***. The above view is again followed in ***United India Insurance Co. Ltd. v. Tilak Singh (2006 (2) KLT 884 (SC))***. But at the same time it was held in ***National Insurance Co. Ltd. v. Baljit Kaur and others (2004 AIR SC 1340)*** and ***Oriental Insurance Co. Ltd. v. Nanjappa and others (2004 AIR SCW 952)*** that in old cases the amount should be paid by the Insurance company and can be reimbursed from the owner and driver. The dependents of the deceased are left with no remedies even though accident occurred in 1992. At the time when the award was passed, law declared was that such passengers are also entitled to coverage and those decisions were also referred to by the tribunal. Satpal Singh's case was overruled in ***Asha Rani's case***. In these circumstances, appellant Insurance company is

directed to deposit the amount and in turn it is given the right to recover the same from the insured in execution of the award. With the above observations this appeal is disposed of.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.627 OF 1997 (A)

J U D G M E N T

19th July, 2007